

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

KASHMIR GILL,

Plaintiff,

ORDER

19-CV-04216

- against -

JUS BROADCASTING CORP, JUS PUNJABI,
LLC, JUS ONE, CORP., JUS BROADCASTING
CORP PVT LTD, and PENNY SANDHU,

Defendants.

-----x

GLASSER, Senior United States District Judge:

On August 16, 2019, Defendants requested that the Court approve a briefing schedule in connection with their upcoming motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 32). On August 19, 2019, the Court granted Defendants' request, relying on their representation that Plaintiff refused to confer regarding that schedule in contravention with the Court's individual rules. (ECF No. 34). Having reviewed Plaintiff's letter request for reconsideration, (ECF No. 35), that representation appears to be untrue. Further, Defendants' first motion to dismiss for lack of jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure was denied. (ECF No. 23). Defendants are not entitled to a second bite of the apple.

According to Rule 12(g)(2), “[e]xcept as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.” Rule 12(h)(2) provides that “[f]ailure to state a claim upon which relief can be granted . . . may be raised . . . (A) in any pleading allowed or ordered under Rule 7(a); (B) by a motion under Rule 12(c); or (C) at

trial.” Accordingly, the Federal Rules of Civil Procedure do not permit a second Rule 12(b)(6) motion to be made and Plaintiff’s motion for reconsideration of the Court’s August 19, 2019 Order is **GRANTED**.

SO ORDERED.

Dated: Brooklyn, New York
August 22, 2019

/s
I. Leo Glasser U.S.D.J.